

## Summary

Thesis title: **Contractual liability and its limitation**

The aim of the thesis is to assess the options of parties to a contract when settling liability rules diversify from the standards of Czech Civil Code (Act. 89/2012 Coll). The author provides introduction of multiple ways of how the parties can limit their contractual liability and emphasize that the aim of any liability is to motivate subjects to pay attention to the opposite party's rights and assets, but in the context of Civil Code its main function is to repair damages and satisfy the injured party. The subject which is in breach of its duties therefore gets new or alternated duties, as well as the injured party gains more rights on its side.

For the scope of liability, it is important to define the content of the contract as the parties see it in the moment of the contract's conclusion. The content does not consist only of rights and duties connected to the fulfilment of the contract object matter, but it also consists of duties to respect other interests of the opposite party, so the *status quo* in respect to matters not connected with the fulfilment of the obligations remain untouched. Such a protective aim arises out of strengthened confidence of the relation between contractual parties and can be mainly seen as a duty of prevention and honesty. This additional sphere is called the sphere of delict in obligation and is considered as the widest range of the contractual duties. This sphere of contractual liability can be superimposed with delict sphere, but these two do not exclude each other. They coexist, so the right holder can choose the basis on which he or she wants to claim his or her rights. The third person can also raise claim for damages for breach of the contract, including claims arising out of breaches in the sphere of delict in obligation. Rights to potential damages of this third person can be limited or excluded by the contracting parties, but once the claim arises, its only in hands of this third party.

When dealing with rigid borders of contractual liability limitations, the author first recalls that subjects in civil law enjoy unlimited liberty of action and freedom to settle their mutual rights and obligations, unless they do not come into conflict with the rigid rules, which are ultimately necessary to protect higher values than this freedom of individual. Therefore, the freedom in settling the limits to contractual liability is restricted not only by specific rules, but also by general rules of Civil Code, which protects good manners that lay in equity and moral standards, and honesty, which basically protects parties against malicious acts of the other party.

Section 2898 of Civil Code is the general rule regarding restriction of the scope of contractual liability limitation. It states that parties, or one of them solely, cannot limit or exclude any future claims to damages for breach of the contract in case these damages arise out of breach of natural rights of an individual, or these damages are caused intentionally or due to gross negligence, or if such limitation is restricting the claims of weaker party to the contract. In case that such stipulation appears, it is disregarded in the scope of its inconsistency with the rule, however the rest of the stipulation, which does not collide with the rule remains valid. The author then compares this general rule with other specific rules limiting the possibilities to restrict the claims in different institutes. These norms also focus on protecting the weaker party in contracts, but vary in definition of the protected subjects and in cases of application, so the application scope can be different from the scope of the general rule of section 2898.